Canadian Chamber of Commerce

Submission on Canada Labour Code

October 1971

THE CANADIAN CHAMBER OF COMMERCE

SUBMISSION ON

CANADA LABOUR CODE

OCTOBER 1971

SUBMISSION

REGARDING BILL C-253

AN ACT TO AMEND THE CANADA LABOUR CODE

to the

HON. B. MACKASEY
Minister of Labour

by the

EXECUTIVE COUNCIL

of

THE CANADIAN CHAMBER OF COMMERCE

SEPTEMBER 1971

Introduction

Proposals to amend federal labour laws as set forth in Bill C-253 are extremely disappointing to the Executive Council. Indeed, some of the proposals - the primary one concerns technological change - cause us serious alarm.

In introducing this Bill in the House of Commons, the Minister of Labour stated that it was the result of a lengthy study based on, amongst other things, submissions made to him by representatives of management. The Chamber and other employer groups have, in fact, made several submissions to the Minister concerning legislation under his jurisdiction but it is clear tnat these submissions have been given very little, if any, consideration. Hopefully, this present submission will be given serious consideration.

It is Chamber policy to be as positive and constructive as possible in submissions to government regarding proposed legislation. We have conducted our review of Bill C-253 in this spirit. But it is very difficult, if not impossible, to be other than negative due to the nature of the proposed amendments together with what, to us, are glaring omissions from the Bill.

Philosophy behind Bill

Taken as a whole - proposed amendments and omissions - it is clear that Bill C-253 is grounded in a philosophy which seems to be pro-union and anti-business. Faced with such a situation, the position of the Executive Council concerning the Bill should not be unexpected or evoke any surprise whatsoever.

The framers of the proposals seem to be of the view that our present industrial relations system is good and that the only improvements which should be brought to it should ensure that we have more of what we have now. This is the only logical explanation, for example, for amendments which would facilitate union organization, widen the scope of collective bargaining into supervisory ranks and increase the potential for labour-management conflict even during the life of a collective agreement. It is our firm view that such amendments are, in effect, not designed to reduce industrial conflict, surely one of the fundamental objectives of the Act.

Omissions from Bill

Apart from specific amendments, some of which are dealt with later in this submission, we wish to make brief reference here to important omissions from the Bill.

There are no provisions to deal effectively with what are commonly known as public interest disputes. Labour disputes under federal jurisdiction are seldom local in their effects, - widespread disruption is the rule rather than the exception. There is a real need, in the public interest, to curtail or replace the strike privilege in these situations but the Bill is silent in this regard.

The Bill is also silent on the vital point of redressing the imbalance of bargaining power which unions clearly enjoy. It is unnecessary to catalogue the many and varied reasons for the swing which has taken place in favour of unions; however, it can

be said fairly that most observers of labour-management relations acknowledge that the pendulum has swung significantly to the union's side. The crises in construction labour relations amply demonstrates this point and, in the federal field, one need not look beyond the chaos caused by the recent towboat and longshormen's disputes in British Columbia for telling confirmation that the unions hold the high cards in collective bargaining. We have looked in vain for clauses in the Bill to bring the pendulum back, even a little bit. For instance, there are no provisions to encourage a union to properly discharge its responsibilities under a collective agreement nor is there provision for designation of a public enforcement officer to initiate action against the offending parties involved in violation of labour statutes.

Several provincial legislatures have amended their laws to specifically permit suits in court by and against trade unions. Federal labour law should contain such a provision as well. This would not only settle the question of the extension of the decision of the Supreme Court of Canada in the Therien Case to unions under the federal labour relations statute but it would be a clear declaration by Parliament that unions are to be responsible before the law just like everyone else in society.

Nor does the Bill propose a cure for the serious problem of union membership rejection of bargained settlements, - a significant aspect in the breakdown of the collective bargaining system as presently practiced.

As already indicated, the Executive Council is very

disappointed at these obvious omissions from the Bill. They are further evidence that the Bill is highly favourable to organized labour and provides no relief from the labour troubles which have plagued industry and the long-suffering public particularly in recent years.

Amendments in Bill

We intend to deal with only a couple of the more vital amendments extensively. Several of the other amendments are also important and our more or less perfunctory treatment of them should not be construed as a minimization of that importance. Our purpose in confining ourselves in this way is simply an attempt to impress upon you the alarm we have concerning these very major changes which are being proposed.

1. Technological Change

No fair-minded person will dispute the fact that an employee who is adversely affected by change - technological or otherwise - should have reasonable assistance available to him so that he can reasonably adjust to the change. In fact, a good number of collective agreements already contain provisions in this regard and, with or without an agreement with a union, many employers do take steps to alleviate hardship as much as possible. Furthermore, this was one of the reasons for changes recently enacted by Parliament in the Unemployment Insurance Act and the Canada Labour (Standards) Code. With few reservations - admittedly a couple of which are major - the Chamber endorses this legislation and we said as much when the amendments were under consideration.

But now we are faced with a proposal which provides that management's ability to innovate and effect technological change in its operations is to be restricted severely by giving unions power to delay a technological change and even veto implementation of a change by strike action during the life of a collective agreement. Such restrictions are wholly unacceptable to Canadian business and industry.

In terms of labour-management relations, these technological change provisions would not reduce industrial conflict - they would create more than we have now. In economic terms, these provisions would seriously jeopardize the economic well-being of industry and Canadians generally. Economic implications inherent in such a concept are so vast that one can fairly say the proposal introduces a new basic plank in our national economic policy under the guise of labour relations law.

There is overwhelming opinion amply supported by evidence that it is essential for Canadian industry to innovate constantly if we hope to maintain and improve our competitive position in both domestic and foreign markets. Changing world trading patterns accentuate this need and our competitors are not saddled with the fetters on technological change which are proposed in Bill C-253.

Business on this continent is not prosperous, reflecting, amongst other things, the unfavourable unemployment picture. In the words of an advertisement sponsored by Manpower and Immigration:

"Jobs don't grow on trees.
They grow from the initiative
and enterprise of the private
sector ....."

And some other departments of the federal government are urging industry to streamline, rationalize and innovate, all with the objective of improving our competitive position. The technological change concept in Bill C-253 is a push in the opposite direction.

Depressed business conditions in U.S. have been recognized and President Nixon has taken dramatic steps in an attempt to get the economy moving again and on a firm base. Apart from the fundamental wrongness of the technological change concept in the Bill, its introduction could not be more out of step with what is required to get the Canadian economy moving again.

What would the technological change provisions, if enacted, do for or, more accurately, do to business?

1. management initiative to innovate and make changes in materials and equipment would be impeded;
2. persons not accountable for the results of the business would have a compelling if not a definitive say regarding changes;
3. effectively preclude so-called automation, industrial conversion or technological change provisions from being negotiated into collective agreements during regular bargaining unless such agreement provisions meet the tests proposed in the Bill;

4. through evidence adduced at a CLRB hearing, require an employer to divulge an innovation (and possibly the operations allied therewith) to existing and potential competitors who, in many cases, will not be under the restrictions proposed in the Bill;
5. increase the risk element in capital expenditures and other costs involved in making technological changes;
6. wipe out the relative stability ensured by fixed-term collective agreements, - a corner-stone of our industrial relations system which employees, customers, suppliers, shareowners and perhaps even the tax collector count on;
7. subject an employer to harassment by a union which - without fear of penalty - could apply, time after time, to the Canada Labour Relations Board for an order to force negotiations over an alleged technological change;
8. force an employer to grant unforeseen economic concessions during the life of an agreement, - perhaps even concessions in excess of those reasonably needed for "assisting" affected employees to "adjust" to a change;
9. place an employer who is subject to the provisions of the Bill in an unfair position vis-à-vis an employer who, for one reason or another, is not subject thereto.

For the union's part, the provisions, if enacted, would certainly grant them substantially more rights and privileges without any responsibilities or accountabilities whatsoever. However, it is fair to speculate that unions would be subjected to more and divisive membership pressure - not all employees are adversely affected by every technological change - when much of the normal pressures cannot be handled adequately by them now. While apparently loath to admit it, the fixed-term contract has doubtless been a good thing for unions as well as employers. Firming of term agreements in the vast majority of cases in U.S. confirms this.

Finally, will the provisions, if enacted, materially benefit employees under federal jurisdiction? The answer would appear to be "no". Many, if not most, major collective agreements already have provisions which are aimed at softening the blow on employees who are adversely affected by technological change. And the provisions of the Bill have no application where there is no union.

Further, the proposal in the Bill seems to be based on the assumption that, unless forced, employers have little or no concern for the welfare of employees, particularly those employees who may be affected by a technological change. This is a false assumption. Responsible employers are very much concerned and those who believe otherwise would experience surprise at the measures which are often taken but go unnoticed to facilitate change as smoothly and painlessly as possible.

It may well be that a major technological change will threaten the very existence of a union in a plant or in an industry. Granting that union the power to delay or even veto the change is tantamount to legalizing Luddite-like conduct aimed at arbitrarily stopping progress and promoting feather-bedding.

Contrary to fears expressed by some people some years ago that technological changes would result in a substantial net reduction in the number of jobs, the fact is that advancing technology has created more new jobs than have been rendered redundant because of it. Thus, any impediment to technological change helps restrict new employment opportunities.

The nature and timing of future innovations and changes are largely unknown and unforeseen by an employer. But he does know that changes have to be made if he is to continue in business. Unions and employees know this as well. While no one knows what the changes will be, everyone concerned knows that when a change is made, some employees may have to be retrained, others may have to be relocated and, unfortunately, others may have to be laid off. These eventualities can be provided for at the time of regular negotiations and, as mentioned above, they often are. To create a crisis of uncertainty at the time the change is made is unnecessary and is not in the best interests of anyone but this is exactly what the technological change provisions of the Bill would do.

An industrial organization is very complex. A single change can have far-reaching effects and involve very complex

interactions within the operation itself and outside as well. A technological change in an operation can place new demands for technological change on its own feeder departments and on its outside suppliers. It is obvious that there can easily be a chain reaction or a sequence of changes which have to be made. If all these technological changes are to be subject to union scrutiny, one can visualize a nightmare of successive changes, challenges and delays compounded in geometric progression.

There are many circumstances other than a technological change which can adversely affect employees. Changing market conditions is a common one but changes in tariffs, taxes, etc., can equally cause disruption in the work force. Why should Bill C-253 single out technological change? Obviously, we are not suggesting for a moment that the proposed amendment be enlarged to cover additional circumstances. That would simply be injecting more chaos into our industrial relations system on a grand scale. But we submit our point is well made especially when there is no demonstrable problem regarding technological change.

In the light of the points we have raised, we respectfully submit that the technological change section of the Bill be withdrawn.

2. Unionization of Supervisors

Provisions in the Bill to encourage unionization of supervisors are highly objectionable on several counts.

Foremost is failure on the part of the draftsmen of the Bill to appreciate that persons who are supervisors in fact - not only in name - comprise a vital element in a smoothly-functioning and effective management team. Supervisors are the key front-line of management. Building and maintaining a cohesive management team - an objective of every good manager - will be seriously jeopardized, if not made impossible, by fragmentation of the management group. And this is exactly wnat Bill C-253 would do.

A supervisor - properly so-called - is responsible for performance of the work, employee appraisal, promotions, discipline, grievance handling and so forth. He cannot discharge these responsibilities effectively if he is subjected to the divided loyalties and other pressures which would result from unionization. Such a threat to his effectiveness would make his value as a member of the management team dubious to say the least and a consequent reappraisal of his function would almost certainly result in a downgrading of first-line supervision.

Unquestionably, some persons in some instances may be supervisors in name only. In such a case, the CLRB already has jurisdiction to make such a determination and include them in a unit appropriate for collective bargaining when considering an application for certification. A change in the legislation in this regard is bound to prompt a change by the CLRB in making its determinations, - criteria for determining who "performs management functions" will be adjusted to weaken the management

team. The undesirable consequences of this have already been noted.

Employees in some businesses and industries can, from a practical point of view, continue at least limited operations and provide essential services during a strike. It should be remembered that this is a legal right of the employer in every instance despite union attempts to prevent it by physical and other means. Inclusion of supervisors in a plant bargaining unit will seriously hamper an employer's ability to carry on business activity during a strike, - another and a significant push on the balance of power pendulum to the union's side.

Since the advent of collective bargaining for federal civil servants, one of the problems for government management has been the inclusion of some supervisors in the bargaining units. Hopefully, this will be corrected as a result of the review of the Public Service Staff Relations Act which is currently underway. With this very real problem on its own doorstep, the government by Bill C-253 proposes to saddle private employers with exactly the same problem.

Two years ago, in our submission on the Woods Task Force Report, we strongly objected to the recommendation in the Report which would extend collective bargaining to managerial groups. Nothing has occurred in the interim which suggests that we change our views. Indeed, the labour turmoil we have experienced confirms the position we took and we repeat it here as it has equal application to the Task Force recommendation and to the proposal in Bill C-253.

> "It should be recalled that state compulsion of collective bargaining is unique to North America. In North America, however, no legislature extends these compulsory bargaining privileges to employees of the rank of "supervisor" or higher or to "managerial employees" or "persons exercising managerial functions". These exclusions are not arbitrary but arise from the recognition that while the state should not prohibit collective bargaining with any category of employee, it would be damaging to the economy to undermine the integrity of management by compelling bargaining and fostering conflict between different levels of management. While the Report notes this incompatibility with the efficiency of management and the economic welfare of the country, the Report presumes - quite arbitrarily, completely without reason - to make a distinction between "supervisors" and "junior" management, on the one hand, and the rest of management, on the other.
>
> "We repeat that collective bargaining is not an end in itself. The purpose of collective bargaining is to permit a means of reconciling conflicting interests in the work place. The absence of any wide spread or indeed noticeable attempt by managerial groups to organize themselves for collective bargaining purposes demonstrates the doctrinaire quality and impractical character of the recommendations."

We recommend that the present jurisdiction of the CLRB to determine who is an "employee" for the purpose of inclusion in a unit appropriate for bargaining be unchanged.

3. Picketing

The proposal to legitimatize picketing at "any place of business or operation of the employer" who is struck does nothing to promote industrial peace or reduce conflict. It is certain to have the opposite effect. When a manufacturing, warehousing and/or transportation complex is considered, the potential areas for conflict become very apparent.

This has proven to be a serious problem in British Columbia where the situation respecting picketing is similar to that proposed in the Bill and, it should be noted, the B.C. situation is restricted in scope to that Province alone.

Workable laws which would adequately define the nature and scope of permissible picketing to cover all situations fairly would be very difficult if not impossible to formulate. They would certainly be complex, as would the provisions to control abuses and so forth. It is interesting to note that Bill C-253 does not even attempt a definition of "picketing" - understandable in light of the complexities - but necessary if a meaningful picketing code is to be legislated.

Picketing is a weapon of dispute. Legal sanction of expansion of its use simply gives another push to that balance of power pendulum and should not be entertained. The matter should be left with the courts for adjudication in each case.

The Chamber has long recognized the dangers in widening the scope of picketing and its policy statement on this point is very clear in the event that a picketing provision is contemplated for federal labour laws, viz: that there be a prohibition of any picketing

> "except at the actual site of the labour dispute and in such cases the picketing is being done by employees of the operation where the legal strike or lock-out exists."

4. Certification

There should be a secret ballot vote for every certification and decertification. Extending this aspect of democracy to labour relations is long overdue.

If the Bill were amended to provide for a vote in every case, the Executive Council would agree, reluctantly, that an application for certification could be entertained if the applicant union showed 35% or more membership. But we strongly feel that, to obtain certification, the union should win the votes of more than 50% of employees who are eligible to vote and not simply over 50% of those who do participate in the vote.

The double standard in the Bill regarding certification on the one hand and decertification on the other should be rectified. If the 35% qualification is to apply to certification, it should apply to decertification as well. No other arrangement can be considered equitable.

5. Arbitration of Rights Dispute

It is disturbing to see that the Bill prohibits even a limited right of appeal from an arbitrator's decision in a grievance case. The government is to be commended for enacting Section 28 of the Federal Court Act and for providing in Bill C-253 that orders and decisions of the CLRB be subject to review thereunder. This same protection should be afforded the parties to an arbitration of a rights (grievance) dispute. Arbitrators are judges - weigh evidence, determine credibility and facts,

make contract interpretations and render decisions - and it's time to dispel the myth that labour arbitrators are so different from other 'judges' that they cannot be corrected when they err.

6. Canada Labour Relations Board

The Chamber is on record as endorsing the concept of a public body at the national level. The proposal to grant members of the Board some security of office is also endorsed by us. This should help to attract the kind of person which is needed if the Board is to establish and maintain acceptance and respect. Hopefully, the majority of the appointees - if not all - will come from the ranks of unions and management provided, of course, they satisfy the other criteria which we presume will be carefully established. In our view, an individual whose career has not involved him directly in labour-management affairs is not, thereby, particularly qualified for membership on the Board.

Conclusion

Several other proposals in the Bill could be referred to, for instance: it is unsound to require ministerial consent to prosecute; prohibition against premature strike vote was sound and should be retained; CLRB should not have jurisdiction to, in effect, require two or more employers to jointly bargain; and so on.

Even if each of these many points was corrected or clarified to our satisfaction, our position regarding technological change, unionization of supervisors and the other major points would not change.

The fact of the matter is that, in our view, the proposed amendments in the Bill will lead to greater labour-management conflict and further inflate our already high cost economy and cost Canada and Canadians jobs. The Bill is so far out of step with what is required that the only reasonable alternative, as we see it, is to withdraw it and re-introduce it at a later date with substantial modification.

All of which is respectfully submitted.

C.H. Scoffield,
General Manager

R.K. Carty,
Chairman, Executive Council

OFFICES OF THE CANADIAN CHAMBER OF COMMERCE AT YOUR SERVICE

NATIONAL OFFICE
Office of the
General Manager
Commerce House,
1080 Beaver Hall Hill
Montreal 128, Que.

BRITISH COLUMBIA OFFICE
717 West Pender Street,
Vancouver 1, B.C.

ALBERTA OFFICE
10201 — 104 Street,
Edmonton, Alta.

SASKATCHEWAN OFFICE
2020 — 11th Avenue,
Regina, Sask.

MANITOBA OFFICE
177 Lombard Ave.,
Winnipeg 2, Man.

ONTARIO OFFICE
330 University Ave.,
Toronto 1, Ont.

QUEBEC OFFICE
1080 côte du Beaver Hall
Montréal 128, Qué.

ATLANTIC REGION OFFICE
1111 Main Street,
Moncton, N.B.

E • 701 • 9/71 • 5M (F500) CS/E